

**HB 706-FN-A - AS AMENDED BY THE HOUSE**

28Feb2019... 0597h

28Feb2019... 0699h

2019 SESSION

19-0192

11/03

HOUSE BILL **706-FN-A**

AN ACT establishing an independent redistricting commission.

SPONSORS: Rep. M. Smith, Straf. 6; Rep. Berch, Ches. 1; Rep. Porter, Hills. 1; Rep. Knirk, Carr. 3; Rep. Danielson, Hills. 7; Rep. Ebel, Merr. 5; Rep. Gordon, Graf. 9; Rep. Myler, Merr. 10; Sen. Fuller Clark, Dist 21; Sen. Chandley, Dist 11; Sen. Feltes, Dist 15

COMMITTEE: Election Law

## ANALYSIS

This bill establishes an independent redistricting commission.

Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears ~~[in brackets and struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT establishing an independent redistricting commission.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Chapter; Independent Redistricting Commission. Amend RSA by inserting after chapter 662-A the following new chapter:

## CHAPTER 662-B

## INDEPENDENT REDISTRICTING COMMISSION

662-B:1 Independent Redistricting Commission Established. There is hereby established a New Hampshire independent redistricting commission ("commission"), that shall convene no later than July 1 every 10 years beginning in 2021, in order to:

- I. Conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines.
- II. Draw district lines according to the redistricting criteria specified in this chapter.
- III. Conduct its business with integrity and fairness.

662-B:2 Eligibility to Serve on the Commission.

- I. A person shall be eligible for appointment to the commission if the person has registered as a voter in New Hampshire, and has been a member of the same political party or with no political party since the previous statewide election.
- II. Each commission member shall have voted in 2 of the last 3 statewide general elections immediately preceding his or her application for appointment to the commission.
- III. No person shall be eligible to serve as a member of the commission if, at any point during the 4 years prior to submitting an application for appointment to the commission, the person:
- (a) Has been a candidate for, or elected to, any federal, state, or county elective public office.
  - (b) Served as an officer or employee of, or consultant to, a major political party or a campaign committee of a candidate for federal, state, or county elective public office.
  - (c) Served as an elected or appointed member of the state committee of a political party.
  - (d) Has been registered as a lobbyist in New Hampshire.
  - (e) Has contributed 75 percent or more of the individual campaign contribution limit allowable under the Federal Election Campaign Act, or any successor law that replace the Federal Election Campaign Act, to any one federal candidate.
- IV. No person shall be eligible to serve as a commission member if he or she is a staff member, consultant to, under a contract with, or a person with an immediate family relationship with the governor, secretary of state, any member of the legislature, executive council, county commission, or any member of the United States Congress. As used in this section, a member of a person's immediate family is one with whom the person has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.
- V.(a) By joining the commission, a member waives his or her right to hold any federal, state, county, elective public office or to hold any appointed state public office for a period of 4 years from the date of appointment to the commission, and agrees to complete a financial disclosure form 15A as is required of legislators before accepting appointment as a commissioner.
- (b) A member of the commission shall not be eligible, for a period of 2 years from the appointment, to serve as an officer or employee of, or as a consultant to, the New Hampshire general court, or any individual legislator in the state or in the United States Congress, or to register as a lobbyist in this state.

662-B:3 Appointment of Commissioners.

- I. The secretary of state shall identify the pool of eligible commissioners. He or she shall, to the extent practicable, notify all eligible persons and invite them to apply. These efforts shall include, but not be limited to:
- (a) Advertising the application period and criteria in all daily newspapers in the state once a week for 4 consecutive weeks.
  - (b) Advertising the application period and criteria on the home page of all state agency websites.
  - (c) Requesting media to publicize the commission's search for eligible members.
- II.(a) A person who is eligible to serve as a member of the commission may submit an application to the secretary of state no later than February 1 of each year ending in the number one. From all timely and eligible applications received, the secretary of state shall choose 45 potential members of the commission by March 15 of each year ending in the number one. The 45 persons so selected shall proportionally represent the 5 current executive council districts. In addition to fair geographic representation, the secretary of state shall, to the extent practicable, achieve racial, ethnic, and gender diversity within the applicant pool, reflective of the state's diversity.
- (b) The 45 persons so selected shall be divided into 3 pools: 15 members who are members of the largest political party in the state; 15 members who are members of the next largest political party in the state; and 15 persons who are not members of either the largest or next largest political party in the state. The secretary of state shall interview the 45 persons, screening for applicants who are compromise oriented, are able to be impartial, and have an appreciation for New Hampshire's diverse demographics and geography.
- As a result of those interviews, and no later than May 1 of each year ending in the number 1, the 3 pools shall be reduced by 5 persons

each. The majority and minority leaders in each house of the general court shall review the 30 potential members for a period of up to 3 weeks and may each strike 2 applicants, up to a maximum of 8 total strikes by the 4 legislative leaders in total.

(c) From the potential members remaining, and no later than May 22 of each year ending in one, the secretary of state shall appoint at random 3 members who are members of the largest political party in the state, 3 members who are members of the next largest political party in the state, and 3 persons who are not members of either the largest or next largest political party in the state. These 9 members shall then appoint the final 6 members from those persons remaining in the pool. Of the final 6 members, 2 members shall be members of the largest political party in the state, 2 members shall be members of the next largest political party in the state, and 2 persons shall not be members of either the largest or next largest political party in the state.

III. In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the commission may, after being served written notice and given an opportunity for a response, be removed by a vote of 11 members of the commission. A finding of substantial neglect of duty or gross misconduct in office may result in referral to the New Hampshire attorney general for criminal prosecution.

IV. Vacancies on the commission shall be filled when they occur, by selecting a new member from among the original pool of applicants still willing to serve and from the same party category as the member that held the now vacant position, or by seeking a replacement in the same manner as initial appointments.

V. The term of office of commission members expires upon the appointment of the first member of the succeeding commission.

#### 662-B:4 Commission Meetings.

I. The commission shall act in public meetings by the affirmative vote of at least 9 members, including at least 2 members who are members of each of the 2 largest political parties in the state and 2 who are not members of either the largest or next largest political party in the state.

II. All meetings of the commission shall be open to the public. The commission shall publicly post notice of its meetings on the commission website and other appropriate outlets at least 7 days prior to such meetings. All records of the commission, including all communications to or from the commission regarding the work of the commission, shall be made available for public inspection.

III. The commission shall hold at least one public meeting in each county prior to drawing any maps and at least one public meeting in each county after releasing any proposed maps.

IV. The commission shall create a website that shall provide, at a minimum, a description of the role of the commission in the redistricting process, timely information to the public about the time, place, and purpose of each meeting of the commission, reports, minutes, and such other information that will support an open and transparent process.

V. The commission shall provide a meaningful opportunity for all persons to participate in the public meetings, including, but not limited to, issuing notices in multiple languages and ensuring that translation and sign language services are available at all hearings at the commission's expense or through partnership with outside organizations. Meetings shall be held only in spaces that are accessible under the Americans with Disabilities Act of 1990, as amended.

VI. Commission meetings shall be adequately advertised and planned so as to encourage attendance and participation across the state. This includes scheduling meetings outside of regular work hours and using technology that allows for real-time, virtual participation and feedback.

VII. The commission shall be considered a public body subject to RSA 91-A. No documents created or received by the commissioners or staff as part of official duties, including emails and text messages, shall be exempt from disclosure for any privilege other than attorney-client privilege.

VIII. Commissioners and staff may not communicate with outside persons attempting to influence commissioners or commission action outside of public meetings. To the extent that commissioners and staff receive such communications, the identity of the person

or group and the subject of the communication shall be publicly disclosed on the commission website.

#### 662-B:5 Developing Redistricting Maps.

I. During the map drawing process, any member of the public may submit maps or portion of maps for consideration by the commission. These submissions shall be made publicly available and shall include the name of the person making the submission. Electronically submitted maps may be posted on the commission website.

II.(a) The commission shall release proposed maps and shall display the proposed maps, in a manner determined by the commission, providing that such display shall include posting on the commission website for a minimum of 14 days for public comment and by distribution to the news media in a manner designed to achieve the widest public access reasonably possible before establishing a final plan. Additionally, the efforts to achieve access shall include but not be limited to:

(1) Advertising the availability of the proposed maps in all daily newspapers in the state.

(2) Advertising the availability of the proposed maps on the home page of all state agency websites.

(3) Requesting media to publicize the availability of the proposed maps.

(b) When releasing a proposed map, the commission shall also release population data, geographic data, election data, and any other data used to create the plan.

III. The commission shall issue with all proposed and final maps written evaluations that measure the maps against external metrics. These metrics shall cover all criteria set forth in RSA 662-B:6, including the impact of the maps on the ability of minority communities to elect candidates of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to which the maps preserve or divide communities of interest.

IV.(a) No later than January 15 of any year ending in 2, the commission shall act to approve final plans for New Hampshire county commission, house, senate, executive council, and congressional districts. Upon approval, the commission shall submit the final New Hampshire house and senate, executive council, and congressional district plans to the senate president, speaker of the house of representatives, and senate and house minority leaders.

(b) If a chamber of the legislature fails to pass the final plans for the New Hampshire house and senate, the presiding officer of that chamber shall issue a written explanation specifying how the final plan fails the criteria listed in RSA 662-B:6 or any other binding federal or state law. The commission shall then amend the final plans to the extent necessary to satisfy the criteria in RSA 662-B:6 or other legal requirements and resubmit it to the legislature for a subsequent up or down floor vote.

(c) This process shall repeat until the legislature passes final plans for the New Hampshire house and senate at which point the plans shall be filed with the Secretary of State.

#### 662-B:6 Redistricting Criteria.

I. The commission shall establish single or multi-member districts for the New Hampshire county commissions, house of representatives, and single member districts for the New Hampshire senate, executive council, and United States representative, using the following criteria as set forth in the following order of priority:

(a) Districts shall comply with the United States Constitution and all applicable federal laws. Districts shall be drawn on the basis of total population.

(b) Districts shall comply with the New Hampshire constitution and all applicable state laws.

(c) Districts shall form single boundaries and shall not be bisected or otherwise divided by other districts, and shall respect the geographic integrity of political boundaries to the extent practicable without violating the requirements of state law or any of the preceding subdivisions.

(d) Districts shall provide racial minorities and language minorities with an equal opportunity to participate in the political process and shall not diminish their ability to elect candidates of choice, whether alone or in coalition with others.

(e) Districts shall respect the integrity of communities of interest to the extent practicable. For purposes of this section a community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities. Communities of interest shall not include common relationships with political parties or political candidates.

II. The plan as a whole shall not have the intent or the effect of unduly favoring or disfavoring any political party, incumbent, or candidate for political office.

662-B:7 Failure of Commission and Legislature to Reach Consensus. If the commission fails to approve and file redistricting plans by January 15 in a year ending in 2, or the legislature fails to adopt and file a redistricting plan by February 15 of the even year following a federal decennial census, the New Hampshire supreme court shall appoint by March 1 in the even year following a decennial census a special master to create the relevant plans in accordance with the redistricting criteria and requirements set forth in RSA 662-B:6. The court shall make the special master's plans public and schedule a hearing where interested parties may present testimony and other evidence regarding the plans' compliance with redistricting criteria. The supreme court shall accept the master's proposed plan no later than April 1 of the even year following the decennial census and certify the results to the secretary of state, who shall forward the plan to the president of the senate, the speaker of the house of representatives, and the minority leaders of both the house of representatives and senate for adoption in accordance with RSA 662-B:5, IV.

662-B:8 Judicial Review.

I. The New Hampshire supreme court has original and exclusive jurisdiction in all proceedings in which the final and legislatively adopted redistricting map is challenged or is claimed not to have taken timely effect.

II. Any registered voter in this state may file a petition, within 45 days after adoption of a final map on the grounds that the plan violates any federal or state law.

III. The New Hampshire supreme court shall give priority to ruling on any matter related to redistricting presented to the court. If the court determines that the final plan violates any federal or state law, the court shall fashion the relief that it deems appropriate, including, but not limited to, appointment of a new special master in accordance with RSA 662-B:7.

662-B:9 Compensation. Members of the commission shall receive mileage reimbursement at the federal rate for expenses incurred in connection with the duties performed pursuant to this chapter.

662-B:10 Financial Independence.

I. For the fiscal year ending June 30, 2021, the governor may draw a warrant out of sums not otherwise appropriated to fund expenses of the commission established pursuant to this chapter.

II. For each subsequent biennium preceding the decennial census, the governor shall include in his or her budget recommendation appropriations sufficient to meet the estimated expenses of the commission, including but not limited to adequate funding for a statewide outreach program to solicit broad public participation in the redistricting process and adequate office space available for the operation of the commission.

662-B:11 Secretary of State to Provide Support. The secretary of state shall provide such administrative and staff support as is necessary for the commission to perform its duties.

2 Effective Date. This act shall take effect upon its passage.

LBAO

19-0192

Revised 2/12/19

## HB 706-FN-A- FISCAL NOTE

### AS INTRODUCED

AN ACT establishing an independent redistricting commission.

**FISCAL IMPACT:**    ☒ State            ☐ County            ☐ Local            ☐ None

| STATE:                 | Estimated Increase / (Decrease)                                                                                                                |                         |                         |                         |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-------------------------|-------------------------|
|                        | FY 2020                                                                                                                                        | FY 2021                 | FY 2022                 | FY 2023                 |
| <b>Appropriation</b>   | \$0                                                                                                                                            | \$0                     | \$0                     | \$0                     |
| <b>Revenue</b>         | \$0                                                                                                                                            | \$0                     | \$0                     | \$0                     |
| <b>Expenditures</b>    | Indeterminable Increase                                                                                                                        | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| <b>Funding Source:</b> | <input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input type="checkbox"/> Other |                         |                         |                         |

The Judicial Branch and Department of Justice were originally contacted on January 8, 2019, with follow up on January 15, 2019 for a fiscal note worksheet, which they have not provided as of February 12, 2019.

#### **METHODOLOGY:**

This bill creates an independent redistricting commission to convene no later than December 30th every 10 years, beginning in 2020. The Secretary of State would identify the pool of eligible individuals to serve as commissioners, notify such eligible persons and invite them to apply, and use advertisements and media to publicize the search for eligible members. The Secretary of State shall select 60 qualified individuals from this process and further interview and screen these individuals to offer a list of 30 individuals to the House and Senate majority and minority leaders of the General Court for further review and selection, and the Secretary shall then appoint 9 members who will appoint the final 6 members. The Secretary of State shall provide administrative and staff support to the commission.

The Department of State indicates the process of selection of commissioners is involved and would be concurrent with election responsibilities, which may necessitate additional staff. Actual costs are indeterminable at this time.

The Legislative Branch assumes additional costs associated with independent commission member mileage reimbursement would be addressed through appropriations to the Secretary of State's Office. Expenses of the leadership of the General Court in striking applicants and voting on final plans could be absorbed without additional legislative funding.

#### **AGENCIES CONTACTED:**

Departments of State and Justice, Legislative and Judicial Branches